

State of Alaska FY2005 Governor's Operating Budget

Department of Law Torts and Workers' Compensation Component Budget Summary

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Component: Torts and Workers' Compensation

Contribution to Department's Mission

The Torts and Workers' Compensation section provides legal defense and advice in personal injury lawsuits filed against state agencies and state employees. It also provides advice and training to state agencies and represents the State as employer before the Workers Compensation Board.

Core Services

Attorneys in the Torts and Workers' Compensation section defend tort claims, maritime personal injury claims, and civil rights claims for damages under 42 USC §1983 filed in both state and federal court, and in both the trial courts and appellate courts. Examples of the types of lawsuits defended by the section include: wrongful death claims, claims of injury occurring on state or state maintained facilities, medical malpractice claims brought by inmates, maritime personal injury claims against the Alaska Marine Highway system, claims of negligence in the handling of children's abuse or neglect cases, cases against the state for actions of third parties in state custody (e.g. probationers, foster children, inmates), and other claims of injury alleged against state officials (e.g. Alaska State Troopers, drivers of state vehicles, etc.). Attorneys in the section represent state agencies in Workers Compensation claims filed by state employees where the state is the employer. They advocate on behalf of the state at hearings before the Workers' Compensation Board, and represent the state in appeals from the Board taken to the superior and Alaska Supreme Court.

Attorneys in the Torts and Workers' Compensation section provide oral advice and training to state agencies on risk management, workers' compensation, and liability issues and provide oral advice to state adjusters on workers' compensation issues.

FY2005 Resources Allocated to Achieve Results

FY2005 Component Budget: \$2,577,900	Personnel:	
	Full time	27
	Part time	1
	Total	28

Key Component Challenges

As the cost of Worker Compensation payments and medical costs continue to accelerate for the state, the Torts and Workers Compensation Section faces the challenge of litigating these claims and costs to a fair resolution. As the availability of state infrastructure resources decrease, it is anticipated that tort claims arising out of the delivery of state services may increase. Both of these challenges may increase the caseload of the section. The section will be faced with addressing increased caseload with its existing staffing levels.

Significant Changes in Results to be Delivered in FY2005

In tort litigation, the section will increase its use of early Offers of Judgment and Motions for Summary Judgment to achieve fair resolution of cases. In appropriate tort cases, the section will utilize Alternate Dispute Resolution in the early stages of the claim or litigation to resolve cases. In its defense of state workers compensation claims, the section will lodge appropriate challenges to rulings of the Board in order to achieve consistency and predictability.

Major Component Accomplishments in 2003

Appellate Work of the Section of Particular Note:

A multi-million dollar judgment against the Alaska State Troopers was reversed by the Alaska Supreme Court and judgment was entered in favor of the state in the case of *Kiokun v. State*. The Supreme Court held that the trooper decision of when to initiate a search and rescue is an immune discretionary function.

The Alaska Supreme Court affirmed the trial court's dismissal of a lawsuit against a current and a former legislator on the basis of legislative immunity.

The Ninth Circuit Court of Appeals affirmed the U.S. District Court's dismissal of a lawsuit brought against a prosecutor on prosecutorial immunity grounds arising out of the prosecution and conviction of a man charged with assaulting Copper River School District officials.

Jury trials defended by the Section of Particular Note:

The State prevailed at trial in the class action lawsuit arising out of the Miller's Reach Fire in June, 1999. A unanimous jury returned the verdict in favor of the Division of Forestry and the State of Alaska concluding that the state was not negligent in fighting the fire. The section worked closely with outside counsel in defending this class action lawsuit.

The State prevailed at trial in Fairbanks on a claim that the Department of Corrections was negligent in maintaining the kitchen floor at its institution.

Dispositive motions of particular note won by the Section in the trial court:

The U.S. District Court granted dismissal of a lawsuit alleging §1983 violations and seeking declaratory and compensatory relief out of a criminal prosecution for homicide. The lawsuit sought damages of \$30 million.

An Anchorage Superior Court Judge granted summary judgment to the State Department of Transportation in a case involving a traumatic injury to an unsupervised child who was struck by an automobile while running across "C" Street in 1994. Plaintiffs in the case had sought \$25 million in damages.

A lawsuit filed by an ex-employee against two Department of Transportation supervisors and an assistant attorney general was dismissed by the plaintiff (faced by a summary judgment motion on behalf of DOT) shortly before the court was to rule on the motion.

The trial court ruled favorably on the State's Motion to Compel a vocational rehabilitation evaluation in a maritime case brought by a ferry worker.

In two Alaska Workers Compensation Board rulings, the State prevailed after hearings where the state claimants alleged permanent total disability.

Attorneys in the section worked closely on two pieces of legislation introduced by the Governor and passed during the session. In SB 120, workers' compensation remedies and benefits were provided to state-employed seamen in lieu of traditional maritime remedies. In CSHB 245(JUD)(efd fld) am S, immunity for certain suits relating to search and rescue, civil defense, fire management and fire fighting activities was enacted. The legislation also reasserted the state's sovereign immunity for activities of the organized militia unless the claim arises out of state active duty under Title 26. This legislation was intended to overrule certain aspects of Alaska Supreme Court cases relating to liability of the National Guard and liability of the Division of Forestry for fire management and fire fighting activities.

Statutory and Regulatory Authority

No statutes and regulations.

Contact Information
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Torts and Workers' Compensation Component Financial Summary

All dollars shown in thousands

	FY2003 Actuals	FY2004 Authorized	FY2005 Governor
Non-Formula Program:			
Component Expenditures:			
71000 Personal Services	0.0	0.0	2,210.7
72000 Travel	0.0	0.0	28.5
73000 Contractual	0.0	0.0	299.8
74000 Supplies	0.0	0.0	38.9
75000 Equipment	0.0	0.0	0.0
76000 Land/Buildings	0.0	0.0	0.0
77000 Grants, Claims	0.0	0.0	0.0
78000 Miscellaneous	0.0	0.0	0.0
Expenditure Totals	0.0	0.0	2,577.9
Funding Sources:			
1007 Inter-Agency Receipts	0.0	0.0	2,577.9
Funding Totals	0.0	0.0	2,577.9

Estimated Revenue Collections

Description	Master Revenue Account	FY2003 Actuals	FY2004 Authorized	FY2005 Governor
Unrestricted Revenues				
None.		0.0	0.0	0.0
Unrestricted Total		0.0	0.0	0.0
Restricted Revenues				
Interagency Receipts	51015	0.0	0.0	2,577.9
Restricted Total		0.0	0.0	2,577.9
Total Estimated Revenues		0.0	0.0	2,577.9

**Summary of Component Budget Changes
From FY2004 Authorized to FY2005 Governor**

All dollars shown in thousands

	<u>General Funds</u>	<u>Federal Funds</u>	<u>Other Funds</u>	<u>Total Funds</u>
FY2004 Authorized	0.0	0.0	0.0	0.0
Adjustments which will continue current level of service:				
-Positions and Funds from Special Litigation component	0.0	0.0	2,450.0	2,450.0
-Changes to Retirement and Other Personal Services Rates	0.0	0.0	127.9	127.9
FY2005 Governor	0.0	0.0	2,577.9	2,577.9

Torts and Workers' Compensation Personal Services Information

Authorized Positions		Personal Services Costs	
	<u>FY2004</u> <u>Authorized</u>	<u>FY2005</u> <u>Governor</u>	
Full-time	0	27	Annual Salaries 1,662,037
Part-time	0	1	Premium Pay 0
Nonpermanent	0	0	Annual Benefits 650,227
			Less 4.39% Vacancy Factor (101,564)
			Lump Sum Premium Pay 0
Totals	0	28	Total Personal Services 2,210,700

Position Classification Summary

Job Class Title	Anchorage	Fairbanks	Juneau	Others	Total
Assoc Attorney I	1	0	0	0	1
Attorney III	1	0	0	0	1
Attorney IV	8	0	1	0	9
Attorney V	1	1	1	0	3
Attorney VI	1	0	0	0	1
Law Office Assistant I	4	1	1	0	6
Law Office Assistant II	1	1	0	0	2
Paralegal II	3	1	1	0	5
Totals	20	4	4	0	28